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MATTER NO.

296-001

October 1, 2022

VIA CM/ECF

Hon. Sarah L. Cave
United States Magistrate Judge
Southern District of New York
500 Pearl Street, Courtroom 18A
New York, New York 10007

RE: Flynn v. Cable News Network, Inc.
Case 1:21-cv-02587 (GHW/SLC)

Dear Judge Cave:

We represent Plaintiffs, John P. “Jack” Flynn and Leslie A. Flynn (the “Flynnns”) in this matter. Pursuant to § I(A) and II(C)(3) of the Court’s Individual Practices, this letter responds to Defendant Cable News Network, Inc.’s (“CNN”) letter motion for an order (1) compelling plaintiffs’ counsel to complete an independent review of his clients’ documents pursuant to Federal Rule of Civil Procedure 26(g)(1)(A), (2) to re-produce authentic documents, and (3) to provide the required notarized consents for his clients’ social media accounts on Parler to be subpoenaed.

1. Rule 26(g)(1)(A) Review

Rule 26(g)(1)(A), in pertinent part, provides that by signing a Rule 26(a)(1) disclosure an attorney “certifies that to the best of [his or her] knowledge, information, and belief formed after a reasonable inquiry: (A) with respect to a disclosure, it is complete and correct as of the time it is made”.

Prior to service of the Flynnns’ initial disclosures on February 25, 2022, Plaintiffs’ counsel completed an independent review of all available documents, including all documents captured by the Wayback Machine, all social media, email and text messages, in accordance with Federal Rule of Civil Procedure 26(g)(1)(A).

Rule 26(e)(1) provides that a party who has made a disclosure under Rule 26(a) “must supplement or correct its disclosure or response: (A) in a timely manner if the party learns that in some material respect the disclosure or response is incomplete or incorrect, and if the additional or corrective information has not otherwise been made known to the other parties during the discovery process or in writing”.

The Flynnns have supplemented their Rule 26(a) disclosures twice since February 2022. Additional information has also been made known to counsel for CNN during the discovery process in this case and in the pending litigation in the Middle District of Florida, including a text message produced by Valerie Flynn. [PX 162-163]. As Plaintiffs’ counsel’s review of the massive social media data/files¹ of the Flynnns and numerous family members proceeded, counsel discovered additional documents and the identity of additional individuals likely to have discoverable information that the Flynnns will use to support their claims, including

- An 09/24/2020 email from Joe Flynn to a third-party that completely eviscerates CNN’s defenses in this case;
- An 02/06/2021 direct message from Jack Flynn to a third party that directly undercuts CNN’s position that Jack is a “QAnon follower”;
- An 03/12/2021 instagram message from Lori Flynn to Jack Flynn that includes a hyperlink to a YouTube video. During the video, former CBS *60 Minutes* war correspondent, Lara Logan, states that CNN’s use of the Flynn family photograph as a symbol of “insane people that believe in the even more insane conspiracies of QAnon” is “unconscionable” and “really unfair”. “That is not representative of the family. It is not accurate. It is not true. It is wrong ... If there is any journalist out there that has a conscience or any sense of integrity or character, they need to stop doing that.” [See <https://www.youtube.com/watch?v=Y1RA85QI7HI> (starting at 45:35)].

The Flynnns promptly identified the documents² and supplemented their Rule 26(a) disclosures, even though no supplementation was required under Rule 26(e)(1)(A). Discovery has been devastating to CNN. CNN now realizes that it must abandon any “substantial truth” defense.

¹ The parties disagree about the relevant time period and relevant subject matters applicable to this action. In spite of the guidance provided in the District Court’s Memorandum Opinion and Order of August 12, 2022 [ECF No. 65], CNN has requested (and insists on production) of documents and information from the Flynnns on any and all subjects going back as far as November 2016.

² The documents are marked HIGHLY CONFIDENTIAL – COUNSEL’S EYES ONLY in accordance with the Confidentiality Stipulation and Protective Order.

2. Authentic Documents

When Jack Flynn initially produced documents in response to CNN's discovery requests, he wrote dates on the documents and notations such as "@GenFlynn" to show the date of the document and how it related to a CNN discovery request. He was trying to be helpful.

After CNN complained, Jack Flynn produced clean, standalone and complete copies of the documents without any hand-writing on them. [PX 308-576].

3. Parler Consents

CNN is on a fishing expedition. The Flynn's and their family members have complied with CNN's efforts to obtain documents from Parler.

Jack Flynn supplied a notarized consent and CNN obtained data/files from Parler. That data is almost totally irrelevant and unusable. At best, it contains statements and photographs that support the Flynn family's view that the persecution of General Flynn by a "vile cabal of thugs in the FBI, DOJ and Special Counsel's office" was abusive and "intentionally lawless".

Leslie Flynn created a Parler account, but never used it. The Flynn's produced a screenshot of Leslie's account page to verify this fact. [PX 580].

Joe Flynn used his Parler account a grand total of 2 times. The Flynn's produced a screenshot of both posts to verify this fact. [PX 307].

Lori Flynn never had a Parler account. Plaintiffs' counsel advised CNN of this fact on August 9, 2022.

General Flynn has signed and produced a consent so that CNN may obtain his Parler data/files. He and his family were in the eye of the hurricane. He will get the consent notarized once things have normalized in the next few weeks.

Conclusion

CNN is in deep trouble. The Flynn's have fully complied with Rule 26. The Flynn's are not QAnon followers. Nothing can change the truth.

Yours very truly,

/s/ **Steven S. Biss**

Steven S. Biss

cc. Anthony C. Carlini, Jr., Esq.